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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,901	04/02/2001	Gregory Burns	MS1-095USC4	2420

22801 7590 09/06/2005

LEE & HAYES PLLC
421 W RIVERSIDE AVENUE SUITE 500
SPOKANE, WA 99201

EXAMINER

RYMAN, DANIEL J

ART UNIT	PAPER NUMBER
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2665

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/824,901

Applicant(s)

BURNS ET AL.

Examiner

Daniel J. Ryman

Art Unit

2665

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

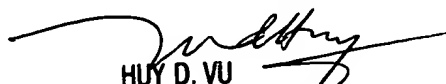
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 4/2/2001
13. ☐ Other: _____.


HUY D. VU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because: Applicant asserts that Sathe "only describes a single communication network for communication over T1 communication links" even though Applicant admits that Sathe discloses using satellite and terrestrial T1 links simultaneously. Applicant then concludes that Sathe does not teach Applicant's first network and second independent network. Examiner, respectfully, disagrees. It is inherent that the satellite links are carried over a satellite network and that the terrestrial links are carried a terrestrial network. Since the satellite links are carried over satellites while the terrestrial links are carried over wires on the ground, it is implicit that these networks are separate and independent. Simply, since the terrestrial links and the satellite links are carried over different media (wireless vs. wired), Examiner maintains that the satellite links are carried by a network that is separate and independent of the network used to carry the terrestrial links. If Applicant wishes to pursue this argument, Examiner requests further explanation as to why Applicant construes a satellite network to be the same network as a terrestrial network.

Applicant further asserts that Sathe "clearly does not teach transmitting 'a portion of the content over a second network, the portion of the content being transmitted in addition to the content which is served to the local service provider via the first network.'" Again, Examiner, respectfully, disagrees. In Sathe, each link carries only a portion of the total data sent between two points (col. 1, lines 26-29). Therefore, any one link only carries "a portion of the content, the portion of the content being transmitted in addition to the content [on another link]." Further, as discussed above, the terrestrial links and the satellite links are on separate networks. Therefore, if one of the links is a terrestrial link and another link is a satellite link, then the satellite link carries "a portion of the content over a second network [(satellite network)], the portion of the content being transmitted in addition to the content which is served . . . via the first network [(terrestrial network)]."

Additionally, Applicant asserts that Sathe "fails to disclose transmitting a portion of the content to the satellite network 'in an event that the portion of the content is not served via the first network within a designated time period.'" Again, Examiner, respectfully, disagrees. Sathe discloses that the satellite link is used in place of a terrestrial link when the terrestrial link fails (col. 7, lines 26-36). In addition, Sathe discloses that it is important to server the data within a certain time period (maximum differential delay), since otherwise the entire inverse multiplexed connection is rejected (col. 3, lines 10-17). Therefore, Sathe suggests that a link fails when it is incapable of transmitting data within the certain time period (maximum differential delay) since this will cause the entire inverse multiplexed connection to be rejected. As such, Examiner maintains that Sathe discloses transmitting a portion of the content (portion carried on a failed terrestrial link) on the satellite network in the event that the portion of the content is not served via the first network (terrestrial network) within a designated time period (max differential delay).

In view of the foregoing, Examiner maintains that the claims are obvious in view of the cited prior art.